84TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1919

A CASE IN WHICH THE ATTORNEY GENERAL HAS RECOMMENDED THE RESCISSION OF THE ADJUSTMENT OF STATUS IN THE MATTER OF BENITO QUINTANA SEARA

MARCH 20, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. WALTER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. Con. Res. 47]

The Committee on the Judiciary, to whom was referred the concurrent resolution (S. Con. Res. 47) withdrawing suspension of deportation of Benito Quintana Seara, having considered the same, report favorably thereon without amendment and recommend that the concurrent resolution do pass.

PURPOSE OF THE CONCURRENT RESOLUTION

The purpose of the concurrent resolution is to withdraw suspension of deportation in accordance with section 246 (a) of Public Law 414 of the 82d Congress in the case of Benito Quintana Seara.

GENERAL INFORMATION

This is a case in which the Attorney General, acting through his duly authorized agents, has, upon the basis of afterdiscovered evidence, determined that an alien whose immigration status was adjusted through the suspension of deportation procedure, was in fact not eligible for such adjustment and has recommended that such adjustment be rescinded and the alien restored to a deportable status.

Under section 19 (c) of the Immigration Act of February 5, 1917, it was provided, in substance, that the attorney General could suspend deportation of certain aliens if he found that such deportation would result in serious economic detriment to a citizen of the United States or legally resident alien who was the spouse, parent, or minor child of such deportable aliens. Section 19 (d) of that act specifically provided that any alien deportable as a subversive was ineligible for suspension of his deportation. Under the law applicable at the time the case was referred to the Congress, the suspension of deportation became final unless acted upon adversely by the Congress in the session in

which it was referred or in the session next following, and the status of the alien could be adjusted to that of a permanent resident.

Public Law 414 of the 82d Congress, approved June 27, 1952, provided in section 246 (a) a procedure for the rescission by Congress of an adjustment of the immigration status of an alien made under the suspension of deportation procedure, if at any time within 5 years after such status has been adjusted, it shall appear to the satisfaction of the Attorney General, and he so recommends to the Congress, that the person was not, in fact, eligible for such adjustment.

Section 246 (a) reads as follows:

> SEC. 246. (a) If, at any time within five years after the status of a person has been adjusted under the provisions of section 244 of this Act or under section 19 (c) of the Immigration Act of February 5, 1917, to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall submit to the Congress a complete and detailed statement of the facts and pertinent provisions of law in the case. Such reports shall be submitted on the first and fifteenth day of each calendar month in which Congress is in session. If during the session of the Congress at which a case is reported, or prior to the close of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution, withdrawing suspension of deportation, the person shall thereupon be subject to all provisions of this Act to the same extent as if the adjustment of status had not been made. If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of section 245 or 249 of this Act or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling deportation in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this Act to the same extent as if the adjustment of status had not been made.

The Attorney General recommended to the 80th Congress that the deportation of Benito Quintana Seara be suspended in accordance with the provisions of section 19 (c) (2) of the Immigration Act of February 5, 1917, and further, that if Congress approved this suspension of deportation that the proceedings be canceled and the status of Benito Quintana Seara be adjusted to that of an alien lawfully admitted for permanent residence. The Congress took no adverse action in connection with the case, and the suspension of deportation became final.

On May 6, 1955, there was submitted to the Congress a letter with attached complete and detailed statement which sets forth the facts upon which is based the conclusion that Benito Quintana Seara was not, in fact, eligible for the adjustment of status previously granted. The letter with attached statement reads as follows:

MAY 6, 1955.

Hon. RICHARD M. NIXON,
President of the United States Senate,
United States Senate, Washington, D. C.

MY DEAR MR. VICE PRESIDENT: In accordance with section 246 (a) of the Immigration and Nationality Act (8 U. S. C. 1256 (a)), there is transmitted herewith a copy of an order entered in the case of Benito Quintana Seara, A–4363045, relative to rescission of adjustment of status granted this individual under section 19 (c) of the Immigration Act of 1917, as amended (8 U. S. C. A. 155 (c)).

It will be appreciated if you will advise me of the action taken by the Congress on the case.

Sincerely,

———— ————, *Commissioner.*

REPORT TO CONGRESS

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Richmond, Va., April 11, 1955.

File: A4363045.

In re Benito Quintana or Benito Quintana Seara Rescission of adjustment of status under section 246 of the Immigration and Nationality Act.

In behalf of subject alien: Edward G. Ruyak, 625 East Fourth Street, Bethlehem, Pa.

This case is considered under section 246 of the Immigration and Nationality Act on recommendation by the special inquiry officer, approved by the district director, to rescind the adjustment of status previously granted subject alien, pursuant to the provisions of section 19 (c) (2) of the Immigration Act of 1917, as amended.

The record shows that proceedings against him were commenced in April 1943, by the service of a warrant of arrest, following which hearing in the matter was held May 19, 1943. Voluntary departure with preexamination was authorized by the Board of Immigration Appeals November 6, 1943, but he did not avail himself of the privilege granted. Thereafter, on June 2, 1947, on motion by counsel, an order was entered directing reopening of the proceeding to afford him an opportunity to apply for suspension of deportation.

Further hearing was held August 18, 1947, in the course of which application was received for relief mentioned and on December 3, 1947, the central office affirmed favorable recommendation of the presiding officer. This action was followed by congressional approval, and on July 22, 1948, the required fee was submitted by the subject, whereupon all that remained to be done was the creation by the Service of a record of lawful entry (exhibit 4).

Within 5 years after said payment, i. e., on July 9, 1953, notice was furnished (exhibit 1), and receipt thereof acknowledged (exhibit 2), of intention by the Service to institute proceedings to rescind adjustment of status to that of a permanent resident, acquired under the provisions of section 19 (c) (2) of the Immigration Act of 1917, as amended. Accordingly, this proceeding is timely.

In the course of hearings in the present proceedings, a witness, Herman Thomas, membership director of the Bethlehem City Club

of the Communist Political Association, at the time, testified be first met the alien in May 1945; that as director of the aforementioned club in Bethlehem, with access to membership rolls, he had ascertained from those records that Benito Quintana was then a member of the organization; and that they attended a number of Communist Party meetings together during the period 1946–48. He stated, too, that he personally had collected membership dues from the subject on several occasions during the same period. The Communist Political Association is merely another designation for the Communist Party of the United States.

A second witness, Rufus Middleton, who acknowledged prior membership in the Communist Party of the United States, from 1945 to 1948, indicated that he was present with the subject at two meetings of the organization but was unable to identify him as an actual member.

The subject denies membership in the party under discussion. His credibility, however, is impaired by equivocal testimony. In that connection it is noted that he has in the past always denied involvement in any questionable activity. On August 7, 1951, however, when interrogated by an officer of the Service (exhibit 6), the alien for the first time acknowledged membership in the IWO about 1937–38. Furthermore, he now admits attendance at functions which, unknown to him, may have been Communist Party meetings.

The evidence represented by the testimony of Herman Thomas is considered clear and convincing. As his own prior testimony was not straightforward, the alien's present self-serving assertions are not worthy of full credence. It has therefore been established by reasonable, substantial, and probative evidence that the subject was a member of one of the classes enumerated in section 19 (d) of the Immigration Act of 1917, as amended, and hence ineligible for adjustment of status under section 19 (c) (2) of the act.

Since it has been found that he was, in fact, ineligible for relief granted, this matter will be submitted to the Congress, pursuant to section 246 of the Immigration and Nationality Act, for consideration as to withdrawal of suspension of deportation, resulting in rescission of adjustment of status and his becoming subject to all the provisions of the act, to the same extent as if such adjustment had not been made.

Order: It is ordered that the foregoing matter be submitted to the Congress, pursuant to section 246 of the Immigration and Nationality Act, for its consideration as to rescission of suspension of deportation heretofore granted under section 19 (c) (2) of the Immigration Act of 1917, as amended.

P. A. ESPERDY,
Acting Regional Commissioner, Southeast Region.

The Attorney General has concluded that under the provisions of section 246 (a) of the Immigration and Nationality Act, the adjustment of status granted Benito Quintana Seara under section 19 (c) (2) of the Immigration Act of February 5, 1917, is rescindable on the ground that he was a member of a subversive organization at the time the adjustment was granted and hence was statutorily ineligible under section 19 (d) of that act.

The committee, after consideration of all the facts, is of the opinion that the concurrent resolution should be agreed to.

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